

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIKA LYNNE FOWLER,

Plaintiff,

v.

RICK COLE, CATHY COLE,

Defendants.

Case No. 2:21-cv-00578-KJM-JDP (PS)

ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN FORMA
PAUPERIS

ECF No. 2

FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF'S COMPLAINT BE
DISMISSED AS FRIVOLOUS

ECF No. 1

Plaintiff has requested authority under 28 U.S.C. § 1915 to proceed *in forma pauperis*. She has submitted the affidavit required thereunder showing that she is unable either to prepay fees and costs or to give security for them. ECF No. 2. The court will therefore grant plaintiff's motion to proceed *in forma pauperis*. However, I find that plaintiff's complaint is frivolous and recommend that it be dismissed without leave to amend.

As required by 28 U.S.C. § 1915(e)(2), the court has screened plaintiff's complaint to ensure that it contains "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). To survive screening, a plaintiff's claims must be facially plausible, which means that they must contain enough factual detail to allow the court to reasonably infer that each named defendant is liable for the misconduct alleged. *Ashcroft v.*

1 *Iqbal*, 556 U.S. 662, 678 (2009). During the screening process, a plaintiff’s allegations are taken
 2 as true, but the court is “not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart*
 3 *Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
 4 The sheer possibility that a defendant acted unlawfully is not enough. *Ashcroft*, 556 U.S. at 678.
 5 While courts must construe a pro se litigant’s complaint liberally, *see Haines v. Kerner*, 404 U.S.
 6 519, 520 (1972) (per curiam), the court may dismiss a pro se litigant’s complaint “if it appears
 7 beyond doubt that the plaintiff can prove no set of facts in support of his claim which would
 8 entitle him to relief,” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).

9 Additionally, a plaintiff’s complaint must set forth the basis for federal court jurisdiction.
 10 A federal court may adjudicate only those cases authorized by the Constitution and by Congress.
 11 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). The basic federal jurisdiction
 12 statutes, 28 U.S.C. §§ 1331 & 1332, confer “federal question” and “diversity” jurisdiction,
 13 respectively. Federal question jurisdiction requires that the complaint (1) arise under a federal
 14 law or the U.S. Constitution, (2) allege a “case or controversy” within the meaning of Article III,
 15 § 2 of the U.S. Constitution, or (3) be authorized by a federal statute that both regulates a specific
 16 subject matter and confers federal jurisdiction.¹ *Baker v. Carr*, 369 U.S. 186, 198 (1962). A case
 17 presumably lies outside the jurisdiction of the federal courts unless demonstrated otherwise.
 18 *Kokkonen*, 511 U.S. at 376-78.

19 Plaintiff’s complaint consists of extravagant allegations accusing the two defendants of
 20 engaging in a lengthy campaign of rape, torture, and spying. Plaintiff alleges, for example, that
 21 defendants have entered her home at night, drugged her, and raped her. ECF No. 1 at 4. She also
 22 claims that defendants have used surveillance equipment—including “high powered surveillance
 23 cameras” and “heat imaging photography equipment”—to spy on her, and that defendants have
 24

25
 26 ¹ To invoke the court’s diversity jurisdiction, a plaintiff must specifically allege the
 27 diverse citizenship of all parties, and that the matter in controversy exceeds \$75,000. 28 U.S.C.
 28 § 1332(a); *Bautista v. Pan American World Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987).
 According to plaintiff’s complaint, all parties reside in Sacramento County, California. Plaintiff
 has not established diversity jurisdiction.

1 used “mind control drugs” and have poisoned plaintiff’s food and water. *Id.* Plaintiff appears to
2 claim that she has been subjected to these acts since her birth. *Id.* at 4-5.

3 Aside from plaintiff’s failure to assert a specific claim against defendants, her complaint is
4 frivolous because it lacks even “an arguable basis either in law or in fact.” *Neitzke v. Williams*,
5 490 U.S. 319, 325 (holding that a complaint is frivolous if its “factual contentions are clearly
6 baseless,” “fantastic,” or “delusional”). Consequently, the complaint should be dismissed without
7 leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (“Under Ninth Circuit
8 case law, district courts are only required to grant leave to amend if a complaint can possibly be
9 saved. Courts are not required to grant leave to amend if a complaint lacks merit entirely.”).

10 Accordingly, it is hereby ORDERED that plaintiff’s motion to proceed *in forma pauperis*,
11 ECF No. 2, is granted.

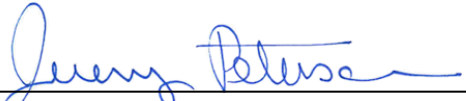
12 Further, it is RECOMMENDED that:

- 13 1. plaintiff’s complaint, ECF No. 1, be dismissed without leave to amend; and
- 14 2. the Clerk of Court be directed to close this case.

15 These findings and recommendations are submitted to the United States District Judge
16 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court and serve a copy on all parties. Such a document should be captioned
19 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
20 objections shall be served and filed within fourteen days after service of the objections. The
21 parties are advised that failure to file objections within the specified time may waive the right to
22 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
23 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

24
25 IT IS SO ORDERED.

26 Dated: August 13, 2021

27 
28 JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE